

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC APPEAL NO. E152 OF 2025

PETER ODERO AYIEKO

MATARA AMON OCHWOTO

STELLA KASYOKA MBUVI

MARTIN KANZONJE

LUCY PAMELA MUTHONI

EDILITA KALEWA MUGO

NOEL MAHIU WAITHAKA.....APPELLANTS

(All suing on behalf of the proposed National Union of Biomedical Engineers of Kenya)

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

*(Being an Appeal from the decision of the Registrar of Trade Unions dated the 25th
of April, 2025)*

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellants herein, being dissatisfied with the decision of the Acting Registrar of Trade Unions dated the 25th of April, 2025 filed an undated memorandum of appeal seeking the following orders:-

- i) The appeal be allowed.**
- ii) A declaration that the Respondent failed in her statutory duty when she failed to exercise her discretion in terms of section 19 of the Labour Relations Act and 31 of the Labour Institutions Act and just rubber-stamped the National Labour Board decision, her action being bad in law, her letter dated 25.4.2025 be declared invalid, null and void ab initio.**
- iii) A declaration that the fundamental rights and freedom of association of the Appellants were substantively breached by the Respondent refusal to register the Union and issue the certificate of registration sought.**
- iv) To quash the Registrar of Trade Unions' decision (Form D) dated 25th April 2025.**
- v) A mandatory order compelling the Registrar (Respondent) to unconditionally register the appellants Union.**
- vi) An order to issue a certificate of registration of and enter the same in the register of registered trade unions.**
- vii) Costs of the appeal.**
- viii) Any other relief that the Court deem just and fit to grant.**

GROUND OF THE APPEAL

2. The acting Registrar of Trade Unions, the Respondent herein, erred in law and fact in finding that the envisaged scope of representation is already sufficiently represented by existing trade unions being the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) and the County Government Workers Union (Kenya).
3. The Registrar significantly erred in law and fact in not drawing the nexus and/or conflict between what is provided for under the Constitution of KUDHEIHA and County Government Workers Union (Kenya) and what is provided in the constitution of the proposed NATIONAL UNION OF BIOMEDICAL ENGINEERS OF KENYA; the reason for refusal of registration.
4. To this extent, the Registrar erred in fact and in law by failing to appreciate that there exists a difference between medical engineers who would need to be regulated by their union on the one hand and cooks, waiters, subordinate and domestic workers represented by KUDHEIHA and county executives, assemblies, municipalities, councils, cities and boroughs, water and sewerage companies, boards and corporations' employees represented by the County Government Workers Union (Kenya) on the other hand.
5. The Registrar fell in grave error of law and fact by holding that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others.

6. The Registrar further fell in grave error of law and fact by holding that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others without specifying which these other unions are.
7. The Registrar erred in fact and in law by failing to appreciate that biomedical engineers consist of qualified medical health engineers in the health sector who work in hospitals as software and hardware engineers, medical device service attendants, researchers and developers and clinical patient evaluators and hence do not fall either under KUDHEIHA or County Government Workers Union (Kenya).
8. The Registrar failed to appreciate the vital role biomedical engineers play in the patient-care ecosystem, a profession that the National Assembly of Kenya sought to legislate on through the Biomedical Engineers Bill 2015.
9. To that extent, it is a complete error in law and fact when the Registrar concluded that there is no evidence adduced to show that the applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.
10. The Registrar erred in fact and in law by violating the Appellants' fundamental constitutional right to form a trade union and which right can only be limited by law, in this case Section 14(1) of the Labour Relations Act, 2007, if such an application has been

made in contravention of Section 14(1) (d) (e) (f) (g) (h) and (j) which was not the case herein.

11. The Registrar erred in law and in fact by failing to consider the exclusivity of the powers conferred upon her by Section 31 of the Labour Institutions Act, 2007 and Section 19(1) and (2) of the Labour Relations Act, 2007.
12. The Registrar erred in fact and in law by failing to consider the public interest issues involved if the proposed trade union was formed, by denying a forum for biomedical engineers who are just as vital inside the patient-care ecosystem.
13. The fundamental right of association of the Appellants and members of the proposed trade union has been violated by the action of the Registrar in contravention of ILO Conventions, Articles 36 and 41 of the Constitution of Kenya 2010, and Section 4 of the Labour Relations Act.
14. The Registrar erred in fact and in law by failing to appreciate that the Salaries and Remuneration Commission does not categorize biomedical engineers in the hospitality industry, rather these professionals are considered as medical practitioners particularly in preventative care.
15. The Registrar erred in fact and in law by failing to appreciate the fact that KUDHEIHA does not represent any health professionals and it is a fact that all health professionals (nurses,

clinical officers and doctors, nutritionists and dieticians and pharmaceutical technologist) have their own unions that represent their interests, except biomedical engineers.

16. The Registrar erred in fact and in law by failing to appreciate that there is no other union of employers and employees that is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the Appellants seek registration.

17. The Registrar erred in fact and in law relying on the existence of another union to refuse registration of National union of Biomedical Engineers of Kenya an opportunity she failed to use when drafting a notice for gazette ment inviting objections from them if it appeared to her they are sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the Appellants seek registration in line with section 14(1) (d) of the Labour Relations Act.

18. The Registrar erred in fact and in law in finding KUDHEIHA and County Government Workers Union (Kenya) are representative of the interests of biomedical engineers without evidence availed before her, or the National Labour Board to show as much.

BACKGROUND TO THE APPEAL

Appellant's case in brief

19. The Appellants herein made an application to the Registrar of Trade Unions, the Respondent herein, vide an application letter (Form A) dated 11th November 2024 requesting registration of a trade union to be known as the National Union of Biomedical Engineers of Kenya (NUBEK) in compliance with Section 18 of the Labour Relations Act.

20. The said application fulfilled the requirements for registering a trade union under section 14 of the Labour Relations Act and was processed as satisfactory culminating in the publication of a notice in the Kenya Gazette Notice No. 16999.
21. The Appellants went over and above the requirements as stipulated under Section 14(1)(d) of the Labour Relations Act of making a single publication in a newspaper of national daily wide circulation and effected three publications in the following newspapers: The Star on 12th December 2024 at page 26; People Daily on 12th December 2024 at page 25; and The Standard on 12th December 2024 at page 26.
22. No existing trade union raised an objection claiming it represents biomedical engineers, evidencing the fact that biomedical engineers are unrepresented by all the registered trade unions.
23. The Appellants aver that when the Respondent issued them with a promotion certificate under Section 12 of the Labour Relations Act, she was satisfied that the proposed trade union was unique in its name and proposed membership pool. They argue that they had a legitimate expectation that their application having been processed by the Registrar, without a call for further information and/or call for rectification within the meaning of Section 18 (3) of the Labour Relations Act, it was certain that the Union would be registered.
24. It is the Appellant's case that the role of registration and regulation of trade unions vests with the Respondent hence she owns decisions whether to register or not to register. Her role should not be reduced to rubber stamping decisions of the National Labour Board, but rather

Section 19 of the Labour Relations Act and Section 7 of the Labour Institutions Act only set up the National Labour Board as advisors to the Registrar meant to be consulted.

25. The Appellants reiterate that biomedical engineers operate in a specialized area of the health sector and they cannot be lumped into other public service trade unions, but should be allowed to register a trade union unique/specific to their area of operation, just like their other medical counterparts.
26. The Appellants are adamant that the decision of the Respondent communicated vide a letter dated 25th April 2025 to the effect that their application for registration was declined on the premise that the envisaged scope of representation is already sufficiently represented by an existing trade union, was discriminatory against biomedical engineers contrary to Article 27 of the Constitution. It also violated their right to associate under Articles 36 and 41 of the Constitution, and Section 4 of the Labour Relations Act.

DETERMINATION

27. The appeal was canvassed by way of written submissions. The appeal was not opposed. Only Appellant filed submissions.
28. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. [1968] EA 123 that:-

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a

retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

29. Further in on principles for appeal decisions in Mbogo V Shah [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94:

"I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

Issues for determination

30. In their submissions dated 11th August 2025, the Appellant identified the following issues for determination: -
- i. Whether the Appellants satisfied all the statutory requirements for the registration of NUBEK.
 - ii. Whether the Appellants were denied registration fairly and legally.

- iii. Whether the Registrar of Trade Unions' decision and orders dated 24th April 2025 as contained in Form D ought to be quashed by this Honourable Court and an order be issued directing the Registrar of Trade Unions to register the NUBEK and issue it with a certificate of registration in Form B set out in the Second Schedule to the Labour Relations Act No. 14.
- iv. Who bears the costs of this appeal.

31. The appeal was unopposed. The court finds the issue for determination is whether the appeal was merited.

Whether the appeal was merited.

Appellant's submissions

32. Whether the Appellants satisfied all the statutory requirements for the registration of NUBEK? Article 41(2) (c) of the Constitution of Kenya 2010 makes provision for the rights of workers as follows: - "Every person has the right to form, join or participate in the activities and programmes of a trade union." Article 36 of the Constitution on the freedom of association on the other hand provides as follows: - (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. (3) Any legislation that requires registration of an association of any kind shall provide that— (a) registration may not be withheld or withdrawn unreasonably; and (b) there shall be a right to have a fair hearing before a registration is cancelled. "My Lady, we submit that the Appellants satisfied all the statutory requirements for the registration of NUBEK as was required of them under Sections 12, 14 and 18 of the Labour Relations Act, 2007. As a matter

of fact, it was upon the said satisfaction that the Registrar, Respondent herein, processed the application for registration of National Union of Biomedical Engineers of Kenya (NUBEK) as a trade union and being satisfied with its compliance with the Labour Relations Act gave a notice in the Kenya Gazette Notice No. 16999 and which was published in three newspapers. The Certificate authorised the Appellants herein to, in line with Section 12 (3) of the Labour Relations Act, ‘...undertake lawful activities in order to establish a trade union...’. This, to our mind is significant because it is indicative of preliminary approval of the Appellant’s registration. It was required of the Appellants to make the application for the registration, to the Registrar, of the trade union within six months; which the Appellants herein did. When the Application was placed for consideration before the National Labour Board on 23rd April, 2025 in line with Section 19 of the Labour Relations Act, the Board did not return a verdict of the Appellants having not complied and/or satisfied any of the statutory requirements for the registration of NUBEK.

33. The ONLY reasons for the refusal to register the Appellants according to the communication of 25th April 2025 was twofold; - 1. It is noted that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others. 2. There is no evidence adduced to show that the applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector. The issue of the options that the Respondent herein has, once Applicants comply with all the statutory requirements for the registration of a Trade Union has sufficiently been canvassed all the way to the Supreme Court of Kenya. In Petition 4 of 2018, Kenya Plantation & Agricultural Workers’ Union v Omulama & 9 others (The

Kenya Export Floriculture, Horticulture and Allied Workers' Union (KEFHAU) Represented by its Promoters) (Petition 4 of 2018) [2020] KESC 59 (KLR) (23 January 2020) (Judgment)

the Supreme Court had the following to say; - 'It is clear in our mind that once an application for registration of a trade union has been made and the same is compliant with the aforesaid Sections and the Constitution, the Registrar of Trade Unions has no choice but to register the same. The only reason for refusal of registration is where there is another trade union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration as provided under Section 14 (1) (d) of the same Act. (emphasis ours) That even without belabouring this particular issue and drawing guidance from the Supreme Court decision, the Respondent herein had no choice other than to register the Appellants unless if the Appellants application was not in conformity with Section 14 (1) (d) of the Labour Relations Act. Issue No. 2; whether the appellants were denied registration fairly and legally. As highlighted herein above, the Appellants were denied registration for the following reasons; 1. That persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others. 2. There is no evidence adduced to show that the applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector. The question that this Court must then answer is whether the reasons provided were reasonable, plausible, fair and legal and whether any evidence was advanced to support the denial. On reason no. 2 as advanced by the Respondent for the refusal that is; - '...that there is no evidence adduced to show that the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.' This reason is not only

absurd but equally illegal and unconstitutional. It is unconstitutional because the Constitution at Article 36 (1) and (2) provide as follows; - (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. From this constitutional provision, it matters not whether the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector; they have the freedom of association and a right to form, join or participate in the activities of an association of any kind. It matters not whether the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector; they have the freedom of association and a right not to be compelled to join an association of any kind. We have further properly appraised ourselves with the provisions of Section 14 (1) (d) of the Labour Relations Act which provides guidance on the requirements for registering a trade union. For context we shall reproduce the said section. 14 . Requirements for registering a trade union (1) A trade union may apply for registration if; - (a) (d) no other trade union already registered is— (i) in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or (ii) in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof: Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisations which appear to him to represent the same interest as the applicants of the receipt of such

application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing, within a period to be specified in the notice, any objections to the registration; From the foregoing, we submit that there is absolutely nowhere in the said section of the law or anywhere in the Act where it provides that registration of a trade union shall be denied because the Applicant did not demonstrate that they 'suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.' That is why in Supreme Court of Kenya Petition 4 of 2018, Kenya Plantation & Agricultural Workers' Union (supra) the Court was very categorical that; - 'The only reason for refusal of registration is where there is another trade union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration as provided under Section 14 (1) (d) of the same Act. (emphasis ours). The reason therefore propounded by the Respondent is not only unconstitutional but also contra-statute and should not be allowed to stand. Back to reason number one for the denial of registration. The Registrar in her wisdom noted that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others. To our mind, if the persons employed as biomedical engineers fell squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others, nothing would have been easier for the registrar than her pointing out specifically from the Constitution of KUDHEIHA and County Government Workers Union (Kenya) how this proposition is outrightly correct. It was outrightly wrong for the Respondent to provide a very blanket statement stating that the interests of the Appellants herein squarely fell under another sector without point the same out. That the objectives of the proposed union and the Appellants herein can be decrypted

from the Objectives of the Appellant's Constitution which states that its mission is inter alia; - To champion for and attain good employment and labour relations between biomedical engineering professionals and their employers by articulating their interests in all spheres of their professional practice. To support and champion for just and proper terms and conditions of service of employment, between Biomedical engineering professionals and employers. To protect the interests of Biomedical engineers in legal disputes, and where practical, offer legal advice and support. (See paragraphs 4.1.) Article 6.1.0 of the Appellant's constitution is very clear on where it draws its membership from and that is from; - '...Membership of the Union shall be open to employed Biomedical engineering professionals...' This, to our mind provides sufficient guidance as to the Scope of representation of the Appellants. While adjudicating on this very issue of scope of representation in *Angaha and Others v. Registrar of Trade Unions* [1973] E.A. and *Kenya Tea Workers Union and 7 others v the Registrar of Trade Unions* [2001] KLR. this Court gave the following guidance which we submit is relevant to the instant Appeal; - '.....in order to be satisfied that the interests of a proposed trade union are sufficiently or substantially represented by another trade union already registered, the Registrar is not bound on a preponderance of probabilities, but only on a scintilla of evidence.' Further, in the matter *Nahason Ndiamae & 9 others v Registrar of Trade Unions* [2017] eKLR this Court directed that the Registrar was obligated to "demonstrate compelling reasons supported by tangible evidence" that unions that object to registration of a rival union "sufficiently represent the whole or a substantial proportion of the interests of the sector in question." Unfortunately, the Registrar neither provided compelling reasons supported by tangible evidence to demonstrate why she arrived at the conclusion that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others. That evidence

was never provided then and neither has it been brought to this Court. We submit that the Registrar was not justified in finding that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others. 37. Further, that the Registrar was not justified in finding that there is no evidence adduced to show that the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.

34. Lastly, that the Registrar's decision infringed on the Appellants constitutional rights under Article 36 and 41 of the Constitution of Kenya 2010 and the Labour Relations Act and hence her actions were illegal and unfair. To this end therefore your very humble Appellants pray that you give declaratory Orders to the effect that the refusal by the Respondent to register NATIONAL UNION OF BIOMEDICAL ENGINEERS OF KENYA (NUBEK) as a Trade Union under the Labour Relations Act upon satisfying the requirements of section 12 & 18 of the Labour Relations Act No. 14 of 2007 is contrary to Article 41 (2) of the Bill of rights under the Constitution of Kenya ,2010 and the decision is null and void ab initio. Issue No. 3; Whether the Registrar of Trade Unions' decision and Orders dated 25th April 2025 as contained in Form D ought to be quashed by this Honourable Court and an Order be issued directing the Registrar of Unions to register the NATIONAL UNION OF BIOMEDICAL ENGINEERS OF KENYA (NUBEK) and issue it with a certificate of Registration in Form B set out in Second Schedule to the Labour Relations Act No. 14. having arrived at the inevitable conclusion that the refusal by the Respondent to register NATIONAL UNION OF BIOMEDICAL ENGINEERS OF KENYA (NUBEK) upon satisfying the requirements of

section 12 & 18 of the Labour Relations Act No. 14 of 2007 is contrary to Article 41 (2) of the Bill of rights under the Constitution of Kenya ,2010 and the decision is null and void ab initio, there can only be two things to be done. Giving an Order; - i. Quashing the Registrar of Trade Unions’ decision and Orders dated 25th April 2025 as contained in Form D; ii. Directing the Registrar of Unions to register the NATIONAL UNION OF BIOMEDICAL ENGINEERS OF KENYA (NUBEK) and issue it with a certificate of Registration in Form B set out in Second Schedule to the Labour Relations Act No. 14 of 2007 within 14 days from the date of these Orders. 41. For the reason that the role of registration and regulation of Trade Unions vests with the Registrar. She owns the decision to register or not to register. This is why proceedings on refusal to register, are initiated in court against her, and not the National Labour Board. She is not an agent of the National Labour Board. Issue No. 4; Who bears the cost of this Appeal. 42. On costs, this Court and the Superior Court have previously settled the law on this issue, stating that costs follow the event. In the Supreme Court case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others Petition No. 4 of 2012; [2014] the Court stated as much and further stated that a court has the discretion in awarding costs in its decision. This remains the law. In the instant case, we see no reason why this Court should deny the Appellants the costs of the Appeal herein.

Decision

The relevant legal frame work

35. Article 41(2)(c) of the Constitution makes provision for the rights of workers as follows:

“Every person has the right to form, join or participate in the activities and programmes of a trade union.”

36. Article 36 of the Constitution on the freedom of association provides as follows:(1)Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.(2)A person shall not be compelled to join an association of any kind.(3)Any legislation that requires registration of an association of any kind shall provide that--(a)registration may not be withheld or withdrawn unreasonably; and(b)there shall be a right to have a fair hearing before a registration is cancelled.”

37. Article 24 of the Constitution makes provision for limitation of rights and fundamental freedoms in the following terms: “A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including--(1)(a)the nature of the right or fundamental freedom;(b)the importance of the purpose of the limitation;(c)the nature and extent of the limitation;(d)the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and(e)the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.(2)Despite clause (1), a provision in legislation limiting a right or fundamental freedom --(a)in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;(b)shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and(c)shall not limit the right or fundamental freedom so far as to derogate from its core or

essential content.(3)The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this article have been satisfied.(4)The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.(5)Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service--(a)article 31 – Privacy;(b)article 36 – Freedom of association;(c)article 37 – Assembly, demonstration, picketing and petition; (d)article 41 – Labour relations;(e)article 43 – Economic and social rights; and(f)article 49 – Rights of arrested persons.”

38. On the requirements for the registration of Trade Unions, the Labour Relations Act, 2007 provides as follows:“12.(1)No person shall recruit members for the purpose of establishing a trade union or employers’ organization unless that person has obtained a certificate from the Registrar issued under this section. ...13.A trade union or employers’ organization shall apply to the Registrar for registration within six months of receiving a certificate issued under section 12.”14.(1)A trade union may apply for registration if—(a)the trade union has applied for registration in accordance with this Act;(b)the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;(c)the trade union has an office and postal address within Kenya;(d)no other trade union already registered is—(i) in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or(ii)in the case of an association of trade unions,

sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof: Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organizations which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organization concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;(e)subject to subsection (2), only members in a sector specified in the constitution qualify for membership of the trade union;(f)the name of the trade union is not the same as that of an existing trade union, or sufficiently similar so as to mislead or cause confusion;(g)the decision to register the trade union was made at a meeting attended by at least fifty members of the trade union;(h)the trade union is independent from the control, either direct or indirect, of any employer or employers' organizations; and (i) the trade union's sole purpose is to pursue the activities of a trade union. (2) Notwithstanding the provisions of subsection (1) (d), the Registrar may register a trade union consisting of persons working in more than one sector, if the Registrar is satisfied that the constitution contains suitable provisions to protect and promote the respective sectoral interests of the employees."Kenya has not ratified the Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 which Guarantees the right to establish and join organizations without previous authorization by the state.

39. The Supreme Court in Kenya Plantation & Agricultural Workers' Union v Omulama & 9 others [2020] KESC 59 (KLR) guided on the registration of trade unions as follows-'34. *We have carefully perused the provisions of sections 12, 13 and 14 of the Employment and Labour Relations Act and other relevant statutory and Constitutional provisions in respect to*

the issue in question. It is clear in our mind that once an application for registration of a trade union has been made and the same is compliant with the aforesaid sections and the Constitution, the Registrar of Trade Unions has no choice but to register the same. The only reason for refusal of registration is where there is another trade union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration as provided under section 14(1)(d) of the same Act. It is not disputed that the 1st to 9th respondents' trade union met the criteria for registration as set out in sections 12, 13 and 14. The only reason the appellant challenged the registration of the respondents' union was that it contravened section 14(1)(d) of the Labour Relations Act. We will therefore limit ourselves to the said section.

35. *We have to make it clear from the onset that section 14(1)(d) of the Labour Relations Act does not operate in a vacuum. The Registrar has to make an inquiry on any objection before arriving at a decision to reject or allow an application. In the instant case, we are convinced that the inquiry made by the trial Judge based on the evidence presented before her, to the effect that the decision of the 10th respondent in rejecting the application for registration of the 1st to 9th respondent's Union, was largely based on the provisions in the repealed Constitution; that the limitations under article 24 of the Constitution did not apply with regard to the 1st to 9th respondents' union; and that there was a fundamental difference between what comprises plantations and agriculture industries, as against the floriculture and horticulture industries was proper. This position was also upheld by the learned Judges of Appeal.*'(emphasis given).

39. The appellant contended that contrary to the decision of the acting Registrar of Unions that their proposed group is sufficiently represented by KUDHEIHA and County Government

Workers Union, that is not the case taking into account their proposed constitution clause 6.1.0, which states –‘ membership of the union shall be open to employed biomedical engineering professionals’.

40. The appellant applied for registration of union known as National Union of Biomedical Engineers of Kenya (NUBEK) where it attached the proposed constitution of the union, names of 121 member proposers and the proposed officials as Form A second schedule of the Labour Relations Act and dated 11th November 2024. The Register of Trade Unions issued notice in a National Newspaper of the proposed registration of the union on 12th December 2024. The Registrar of Trade Unions further took out Gazette Notice no. 16999 of 27th December 2024 pursuant to sections 14, 15 and 17 of the Labour Relations Act notifying of the proposed registration of the said union and called for any objection in 21 days. The appellant stated there was no objections to the registration by any existing union. On the 25th April 2025, following application for registration of proposed union the acting Registrar of Trade Unions communicated rejection of the registration to the appellant and annexed the following form D- *‘FORM D*

(S.20)

THE LABOUR RELATIONS ACT

NOTIFICATION OF REFUSAL OF REGISTRATION

It is notified that the registration of NATIONAL UNION OF BIOMEDICAL ENGINEERS OF KENYA (NUBEK) as a trade union under the Labour Relations Act is refused. The grounds of the refusal are as follows –

The envisaged scope of representation is already sufficiently represented by existing trade unions being the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) and the County Government Workers Union (Kenya). Under its constitution, KUDHEIHA represents persons employed as subordinate staff, nurses and other medical professionals except doctors in both private and public hospitals, nursing homes, dispensaries, clinics, chemists, pharmacists, medical training institutions, animal husbandry and veterinary centers, centers of research and other related projects or organizations providing associated services to medical care and the County Government Workers Union (Kenya) represents any person employed in any capacity in any County Government in Kenya (county executives, assemblies, municipalities, councils, cities and boroughs), Water and sewerage companies and institutions (whether private or public) agencies, boards and corporations with linkage to the county governments in Kenya or domiciled therein and who is above Eighteen (18) years of age.

Section 14 (1) (d) (i) of the Labour Relations Act, 2007 provides that a trade union may apply for registration if no other trade union already registered is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration.

It is noted that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others.

Further, there is no evidence adduced to show that the applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.

Dated this 25th day of April 2025” The Supreme Court in Kenya Plantation & Agricultural Workers’ Union v Omulama & 9 others [2020] KESC 59 (KLR) stated the only reason for refusal for registration upon compliance with legal registration requirements is “The only reason for refusal of registration is where there is another trade union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration as provided under section 14(1)(d) of the same Act.” The Registrar gave 2 reasons for the rejection namely-

A. *‘The envisaged scope of representation is already sufficiently represented by existing trade unions being the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) and the County Government Workers Union (Kenya). Under its constitution, KUDHEIHA represents persons employed as subordinate staff, nurses and other medical professionals except doctors in both private and public hospitals, nursing homes, dispensaries, clinics, chemists, pharmacists, medical training institutions, animal husbandry and veterinary centers, centers of research and other related projects or organizations providing associated services to medical care and the County Government Workers Union (Kenya) represents any person employed in any capacity in any County Government in Kenya (county executives, assemblies, municipalities, councils, cities and boroughs), Water and*

sewerage companies and institutions (whether private or public) agencies, boards and corporations with linkage to the county governments in Kenya or domiciled therein and who is above Eighteen (18) years of age. Section 14 (1) (d) (i) of the Labour Relations Act, 2007 provides that a trade union may apply for registration if no other trade union already registered is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration. It is noted that persons employed as biomedical engineers fall squarely under the sector already represented by KUDHEIHA and County Government Workers Union (Kenya) among others.

B. Further, there is no evidence adduced to show that the applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.’’

41. The court took judicial notice that while KUDHEIHA has been in existence the Registrar of Trade Unions had registered many unions under various areas listed to be under KUDHEIHA like Nurses, Doctors and domestic workers. In the circumstances it would be unjustified to block the registration of the proposed union in a fairly new area of practice non existent at time of registration of KUDHEIHA, which is Biomedical engineering , on basis of the generalized jurisdiction of KUDHEIHA. The court did not find the nexus between the proposed union and the County Government Workers Union which is a brother of the Union of Kenya Civil Servants Workers. The court found the 2nd reason of *‘Further, there is no evidence adduced to show that the applicants suffer from any substantial deficiency in*

representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.” To be in violation of the provision of article 41(2)(c) of the Constitution to wit- ‘ Every worker has the right (c) to form, join or participate in the activities and programmes of a trade union; ‘ The court found the restriction to reject the registration of the proposed union was not justified taking into account the provisions of Article 24(1) of the Constitution to wit- ‘A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including--(1) (a)the nature of the right or fundamental freedom;(b)the importance of the purpose of the limitation;(c)the nature and extent of the limitation;(d)the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and(e)the relation between the limitation and its purpose.’ The appellant having met the conditions for registration under sections 12-17 of the Labour Relations Act , the only reason for refusal to register the proposed union would be as held by the supreme court in Kenya Plantation & Agricultural Workers’ Union v Omulama & 9 others [2020] KESC 59 (KLR) namely - ‘The only reason for refusal of registration is where there is another trade union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration as provided under section 14(1)(d)of the same Act.’ The court finds that biomedical engineering is not sufficiently represented by KUDHEIHA and the Kenya County Government Workers Union and the refusal to register the union on meeting the statutory requirements violated the appellant’s right to form and join the union under Article 41 of the Constitution.

Conclusion

42. The appeal be allowed.

- i) A declaration is issued that that the Respondent failed in her statutory duty when she failed to exercise her discretion in terms of section 19 of the Labour Relations Act and 31 of the Labour Institutions Act and rubber-stamped the National Labour Board decision, her action being bad in law, her letter DETED 25.4.2025 IS declared invalid, null and void ab initio.**
- ii) A declaration is issued that the fundamental rights and freedom of association of the Appellants were breached by the Respondent refusal to register the Union and issue the certificate of registration sought.**
- iii) An order is issued to quash the Registrar of Trade Unions' decision (Form D) dated 25th April 2025.**
- iv) A mandatory order is issued compelling the Registrar (Respondent) to unconditionally register the appellants' Union.**
- v) An order to issue a certificate of registration of and enter the same in the register of registered trade unions within 30 days.**
- vi) Costs of the appeal.**

43. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH
DAY OF NOVEMBER, 2025.**

J.W. KELI

JUDGE

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Ashioya

Respondent: absent

ORIGINAL